

109TH CONGRESS
2D SESSION

S. 3730

To amend title XVIII of the Social Security Act to require the use of recovery audit contractors under the Medicare Integrity Program with respect to Medicare Secondary Payer claims and activities.

IN THE SENATE OF THE UNITED STATES

JULY 25, 2006

Mr. CRAPO introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend title XVIII of the Social Security Act to require the use of recovery audit contractors under the Medicare Integrity Program with respect to Medicare Secondary Payer claims and activities.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Ensuring the Integrity
5 of the Medicare Program Act of 2006”.

1 **SEC. 2. USE OF RECOVERY AUDIT CONTRACTORS UNDER**
2 **THE MEDICARE INTEGRITY PROGRAM FOR**
3 **AUDITS OF MEDICARE SECONDARY PAYER**
4 **CLAIMS AND ACTIVITIES.**

5 (a) IN GENERAL.—Section 1893 of the Social Secu-
6 rity Act (42 U.S.C. 1395ddd), as amended by section
7 6034(d) of the Deficit Reduction Act of 2006 (Public Law
8 109–171), is amended by adding at the end the following
9 new subsection:

10 “(h) USE OF RECOVERY AUDIT CONTRACTORS FOR
11 AUDITS OF MEDICARE SECONDARY PAYER CLAIMS AND
12 ACTIVITIES.—

13 “(1) IN GENERAL.—Under the Program, the
14 Secretary, using a competitive procurement process,
15 shall enter into contracts with recovery audit con-
16 tractors in accordance with this subsection for the
17 purpose of identifying underpayments and overpay-
18 ments and recouping overpayments with respect to
19 Medicare Secondary Payer claims and activities for
20 which payment is made under part A or B. Under
21 the contracts—

22 “(A) payment shall be made to such a con-
23 tractor on a contingent basis at a rate deter-
24 mined by the Secretary; and

25 “(B) such percentage as the Secretary may
26 specify of the amount recovered shall be re-

1 tained by the Secretary and shall be available to
2 the program management account of the Cen-
3 ters for Medicare & Medicaid Services.

4 “(2) USE ON A NATIONAL BASIS.—The Sec-
5 retary shall designate audit and recovery regions for
6 the use of recovery audit contractors on a national
7 basis. Each such region shall be covered under a
8 contract with a recovery audit contractor (or con-
9 tractors, if the Secretary determines appropriate).

10 “(3) AUDIT AND RECOVERY PERIODS.—Each
11 contract with a recovery audit contractor shall pro-
12 vide that audit and recovery activities may be con-
13 ducted with respect to payments made under part A
14 or B with respect to Medicare Secondary Payer
15 claims and activities—

16 “(A) during the current fiscal year;

17 “(B) retrospectively (for a period of not
18 more than 4 fiscal years prior to the current
19 fiscal year); and

20 “(C) with respect to continuing fiscal
21 years.

22 “(4) QUALIFICATIONS OF CONTRACTORS.—A
23 recovery audit contractor is eligible to enter into a
24 contract under this subsection to carry out the ac-

1 activities described in paragraph (1) if the con-
2 tractor—

3 “(A) has staff that has the appropriate
4 clinical knowledge of, and experience with, the
5 payment rules and regulations under the pro-
6 gram under this title or the contractor has, or
7 will contract with, another entity that has such
8 knowledgeable and experienced staff; and

9 “(B) is not a fiscal intermediary under sec-
10 tion 1816, a carrier under section 1842, a
11 Medicare Administrative Contractor under sec-
12 tion 1874A, or a Coordination of Benefits Con-
13 tractor of the Centers for Medicare & Medicaid
14 Services.

15 “(5) PREFERENCE FOR ENTITIES WITH DEM-
16 ONSTRATED PROFICIENCY.—In awarding contracts
17 to recovery audit contractors under this section, the
18 Secretary shall give preference to those risk entities
19 that the Secretary determines have demonstrated
20 more than 3 years direct management experience
21 and a proficiency for cost control or recovery audits
22 with private insurers, health care providers, health
23 plans, or under the medicaid program under title
24 XIX.

1 “(6) CONSTRUCTION RELATING TO CONDUCT
2 OF INVESTIGATION OF FRAUD.—A recovery of an
3 overpayment to a provider by a recovery audit con-
4 tractor shall not be construed to prohibit the Sec-
5 retary or the Attorney General from investigating
6 and prosecuting, if appropriate, allegations of fraud
7 or abuse arising from such overpayment.

8 “(7) REPORT.—The Secretary shall annually
9 submit to Congress a report on the use of recovery
10 audit contractors under the Program. Such report
11 shall include information on the performance of re-
12 covery audit contractors in identifying underpay-
13 ments and overpayments and recouping overpay-
14 ments, including an evaluation of the comparative
15 performance of audit recovery contractors with re-
16 spect to each audit recovery region designated under
17 paragraph (2).

18 “(8) WAIVER.—The Secretary shall waive such
19 provisions of this title as may be necessary to pro-
20 vide for payment of recovery audit contractors under
21 this subsection in accordance with paragraph (1).”.

22 (b) ACCESS TO NATIONAL DIRECTORY OF NEW
23 HIRES DATABASE.—The Secretary of Labor shall provide
24 for access by the Centers for Medicare & Medicaid Serv-
25 ices and recovery audit contractors conducting audit and

1 recovery activities under section 1893(h) of the Social Se-
 2 curity Act, as added by subsection (a), to the National
 3 Directory of New Hires database.

4 (c) ACCESS TO COORDINATION OF BENEFITS CON-
 5 TRACTOR DATABASE.—The Secretary of Labor shall pro-
 6 vide for access by the Centers for Medicare & Medicaid
 7 Services and recovery audit contractors conducting audit
 8 and recovery activities under section 1893(h) of the Social
 9 Security Act, as added by subsection (a), to the database
 10 of the Coordination of Benefits Contractor of the Centers
 11 for Medicare & Medicaid Services with respect to the audit
 12 and recovery periods described in paragraph (3) such sec-
 13 tion 1893(h).

14 (d) SUNSET OF DEMONSTRATION PROJECT FOR USE
 15 OF RECOVERY AUDIT CONTRACTORS WITH RESPECT TO
 16 MEDICARE SECONDARY PAYER CLAIMS AND ACTIVI-
 17 TIES.—Section 306(b)(2) of the Medicare Prescription
 18 Drug, Improvement, and Modernization Act of 2003 (Pub-
 19 lic Law 108–173; 117 Stat. 2256) is amended—

20 (1) by striking “DURATION.—The project” and
 21 inserting “DURATION.—

22 (A) IN GENERAL.—Subject to subpara-
 23 graph (B), the project”; and

1 (2) by inserting after subparagraph (A), as in-
2 serted by paragraph (1), the following new subpara-
3 graph:

4 “(B) SUNSET OF PROJECT WITH RESPECT
5 TO MEDICARE SECONDARY PAYER CLAIMS AND
6 ACTIVITIES.—The project shall not be con-
7 ducted with respect to Medicare Secondary
8 Payer claims and activities on or after the date
9 of enactment of the Ensuring the Integrity of
10 the Medicare Program Act of 2006, except that
11 recovery audit contracts entered into prior to
12 such date with respect to such claims and ac-
13 tivities may be completed pursuant to the terms
14 and conditions of the contract.”.

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